

§ 605.35 Judicial review.

The determination of the Administrator pursuant to this subpart shall be final and conclusive on all parties, but shall be subject to judicial review pursuant to title 5 U.S.C. 701-706.

Subpart E—Reporting and Records**§ 605.40 Reports and information.**

The Administrator may order any grantee or operator for the grantee, to file special or separate reports setting forth information relating to any transportation service rendered by such grantee or operator, in addition to any other reports required by this part.

APPENDIX A TO PART 605

COMPTROLLER GENERAL OF THE
UNITED STATES,
Washington, DC, December 7, 1966.

DEAR MR. WILSON: The enclosure with your letter of October 4, 1966, concerns the legality of providing a grant under the Federal Mass Transit Act of 1964 to the City of San Diego, (City), California. The problem involved arises in connection with the definition in subsection 9(d)(5) of the Act, 49 U.S.C. 1608(d)(5), excluding charter or sightseeing service from the term "mass transportation."

It appears from the enclosure with your letter that the City originally included in its grant application a request for funds to purchase 8 buses designed for charter service. Subsequently the City amended its application by deleting a request for a portion of the funds attributable to the charter bus coaches. However, in addition to the 8 specially designed charter buses initially applied for, the City allegedly uses about 40 of its transit type buses to a substantial extent for charter-type services. In light of these factors surrounding the application by the City, the enclosure requests our opinion with regard to the legality of grants under the Act as it applies to certain matters (in effect questions), which are numbered and quoted below and answered in the order presented.

Number one:

"The grant of funds to a City to purchase buses and equipment which are intended for substantial use in the general charter bus business as well as in the Mass Transportation type business."

The Federal Mass Transit Act of 1964 does not authorize grants to assist in the purchase of buses or other equipment for any service other than urban mass transportation service. Section 3(a) of the Act limits the range of eligible facilities and equipment to " * * * buses and other rolling stock, and

other real or personal property needed for an efficient and coordinated mass transportation system." In turn, "mass transportation" is defined, in section 9(d)(5) of the Act, specifically to exclude charter service. We are advised by the Department of Housing and Urban Development (HUD) that under these provisions, the Department has limited its grants to the purchase of buses of types suitable to meet the needs of the particular kind of urban mass transportation proposed to be furnished by the applicant."

HUD further advises that:

"One of the basic facts of urban mass transportation operations is that the need for rolling stock is far greater during the morning and evening rush hours on weekdays than at any other time. For that reason, any system which has sufficient rolling stock to meet the weekday rush-hour needs of its customers must have a substantial amount of equipment standing idle at other times, as well as drivers and other personnel being paid when there is little for them to do. To relieve this inefficient and uneconomical situation, quite a number of cities have offered incidental charter service using this idle equipment and personnel during the hours when the same are not needed for regularly scheduled runs. Among the cities so doing are Cleveland, Pittsburgh, Alameda, Tacoma, Detroit and Dallas.

"Such service contributes to the success of urban mass transportation operations by bringing in additional revenues and providing full employment to drivers and other employees. It may in some cases even reduce the need for Federal capital grant assistance.

"We do not consider that there is any violation of either the letter or the spirit of the Act as a result of such incidental use of buses in charter service. To guard against abuses, every capital facilities grant contract made by this Department contains the following provisions:

"'Sec. 4. *Use of Project Facilities and Equipment*—The Public Body agrees that the Project facilities and equipment will be used for the provision of mass transportation service within its urban area for the period of the useful life of such facilities and equipment. . . . The Public Body further agrees that during the useful life of the Project facilities and equipment it will submit to HUD such financial statements and other data as may be deemed necessary to assure compliance with this Section.'"

It is our view that grants may be made to a city under section 3(a) of the Act to purchase buses needed by the city for an efficient and coordinated mass transportation system, even though the city may intend to use such buses for charter use when the buses are not needed on regularly scheduled runs (*i.e.*, for mass transportation purposes) and would otherwise be idle.

Number two: